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HOUSE BILL 223

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO GOVERNMENT ACCOUNTABILITY; CREATING THE STATE
COMPTROLLER AND OFFICE; PROVIDING POWERS AND DUTIES; PROVIDING
THE LEGISLATIVE FINANCE COMMITTEE WITH THE DUTY TO CONDUCT
PERFORMANCE AUDITS; PROVIDING PENALTIES; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] STATE COMPTROLLER- - OFFICE- -
CREATED- - PERSONNEL. - -

A. The "office of the state comptroller" is created
as an adjunct agency as provided in the Executive
Reorganization Act. The office shall be headed by the "state
comptroller", who shall be appointed by the governor with the
advice and consent of the senate.

B. The state comptroller shall be a certified

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1 public accountant with audit and government experience and
2 shall be appointed solely on the basis of ability to perform
3 the duties of his office. The state comptroller shall serve
4 for six years, and may be reappointed for succeeding six-year
5 terms. The state comptroller shall be removed only for cause.

6 C. Within available appropriations, the state
7 comptroller may employ such professional and clerical
8 assistants as deemed necessary.

9 Section 2. [NEW MATERIAL] STATE COMPTROLLER--DUTIES.--The
10 state comptroller shall:

11 A. have general oversight authority over the
12 executive branch's implementation of the Accountability in
13 Government Act;

14 B. oversee the statutory oversight duties of the
15 state budget division, the financial control division, the
16 local government division and the management and contracts
17 review division of the department of finance and
18 administration; the state personnel office; the state
19 department of public education; and the commission on higher
20 education to ensure that statutory requirements are being met
21 and statutory duties are being performed;

22 C. receive and review periodic reports from state
23 agency inspectors general and internal auditors;

24 D. work closely with the state auditor's office on
25 annual and special audits of state agencies;

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1 E. as requested by interim legislative committees,
2 gather state agency information and analyze and validate the
3 information; provided, however, that this duty shall not affect
4 the duty of a state agency to otherwise provide information in
5 a timely manner upon request of an interim legislative
6 committee;

7 F. pursuant to the Accountability in Government
8 Act, conduct such performance audits as are necessary to ensure
9 compliance with that act; provided that, in conducting the
10 audits, the state comptroller shall:

11 (1) to the maximum extent possible, plan and
12 coordinate the audits with the legislative finance committee;
13 and

14 (2) share audit work papers and findings with
15 the legislative finance committee;

16 G. perform such other duties as may be assigned by
17 the governor;

18 H. assist state agencies in resolving audit
19 findings and reviewing performance measures;

20 I. contract for such special audits and
21 investigations as are necessary; and

22 J. promulgate such rules as are necessary to carry
23 out the duties of the office.

24 Section 3. [NEW MATERIAL] STATE COMPTROLLER-- COOPERATION
25 OF STATE AGENCIES.--Inspectors general and internal auditors of

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1 state agencies shall report to the state comptroller
2 periodically and as requested. Inspectors general, internal
3 auditors, the state auditor, the office of the attorney general
4 and the state police division of the department of public
5 safety shall conduct such audits and special investigations as
6 are requested by the state comptroller.

7 Section 4. Section 2-5-4 NMSA 1978 (being Laws 1967,
8 Chapter 267, Section 1) is amended to read:

9 "2-5-4. LEGISLATIVE FINANCE COMMITTEE-- ADDITIONAL
10 DUTIES. --

11 A. The legislative finance committee, in addition
12 to all other duties prescribed by law, shall:

13 (1) annually review budgets and appropriations
14 requests; [and]

15 (2) review the operation and management of
16 selected state agencies, departments and institutions; [and
17 shall]

18 (3) conduct performance audits pursuant to the
19 Accountability in Government Act; and

20 (4) make recommendations with respect thereto
21 to the legislature.

22 B. To carry out the purposes of this section, the
23 legislative finance committee shall establish a budget analysis
24 division staffed with persons knowledgeable and proficient in
25 budget analysis and budget preparation.

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1 C. Each state agency, department and institution
2 shall furnish to the legislative finance committee a copy of
3 its appropriation request made to the department of finance and
4 administration at the same time [~~such~~] the request is made [~~to~~
5 ~~such department~~]. Each state agency, department or institution
6 shall also furnish to the legislative finance committee and its
7 staff any other supporting information or data deemed necessary
8 to carry out the purposes of this section.

9 D. The legislative finance committee or, when it
10 deems necessary, its staff may hold such hearings and require
11 such testimony from officers and employees of each state
12 agency, department or institution as is necessary to carry out
13 the purposes of this section.

14 E. Not later than the first week of any regular
15 legislative session, the legislative finance committee shall
16 furnish a document containing its budget recommendations to
17 each member of the senate finance committee, the house
18 appropriations and finance committee and to those other members
19 of the legislature [~~which~~] who may request it. A copy shall
20 also be furnished to the governor and to the department of
21 finance and administration."

22 Section 5. Section 6-3A-1 NMSA 1978 (being Laws 1999,
23 Chapter 5, Section 1 and Laws 1999, Chapter 15, Section 1) is
24 amended to read:

25 "6-3A-1. SHORT TITLE. -- [~~Sections 1 through 8 of this act]~~

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1 Chapter 6, Article 3A NMSA 1978 may be cited as the
2 "Accountability in Government Act". "

3 Section 6. Section 6-3A-3 NMSA 1978 (being Laws 1999,
4 Chapter 5, Section 3 and Laws 1999, Chapter 15, Section 3) is
5 amended to read:

6 "6-3A-3. DEFINITIONS. --As used in the Accountability in
7 Government Act:

8 A. "agency" means a branch, department,
9 institution, board, bureau, commission, district or committee
10 of the state;

11 B. "approved program" means a program included in
12 an approved list of programs issued by the division pursuant to
13 Section [~~4 of the Accountability in Government Act~~] 6-3A-4 NMSA
14 1978;

15 C. "baseline data" means the current level of a
16 program's performance measures established pursuant to
17 guidelines established by the division in consultation with the
18 committee;

19 D. "committee" means the legislative finance
20 committee or a designated member of its staff;

21 E. "division" means the state budget division of
22 the department of finance and administration;

23 F. "outcome" means the measurement of the actual
24 impact or public benefit of a program;

25 G. "performance-based program budget" means a

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1 budget that identifies a total allowed expenditure for a
2 program and includes performance measures, performance
3 standards and program evaluations;

4 H. "performance measure" means a quantitative or
5 qualitative indicator used to assess the output or outcome of
6 an approved program;

7 I. "performance standard" means a targeted level of
8 an output or outcome as indicated by performance measures; and

9 J. "program" means a set of activities undertaken
10 in accordance with a plan of action organized to realize
11 identifiable goals and objectives based on legislative
12 authorization. "

13 Section 7. A new section of the Accountability in
14 Government Act is enacted to read:

15 "[NEW MATERIAL] PERFORMANCE AUDITS. --

16 A. The committee and the state comptroller shall
17 cooperate in developing an audit plan to conduct performance
18 audits of programs operating under performance-based program
19 budgets. The plan may provide for joint audits, separate
20 audits of different programs or separate audits of the same
21 programs and may include programs provided by other agencies
22 that are integrally related to the program being audited.

23 B. Performance audits shall be conducted:

24 (1) on programs identified by the legislature;

25 (2) at the direction of the committee, if the

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1 audit is to be conducted by the committee;

2 (3) at the direction of the governor, if the
3 audit is to be conducted by the state comptroller; and

4 (4) in a manner that is cost-effective and
5 avoids duplication of effort.

6 C. An agency shall offer its complete cooperation
7 to the committee or the state comptroller in the conduct of a
8 performance audit. The committee or the state comptroller, in
9 the performance of an audit, shall have access to, and
10 authority to examine, books, accounts, reports, vouchers,
11 correspondence files and other records, bank accounts, criminal
12 history record information, money and other property of an
13 agency, or such property of a contractor relating to a contract
14 with an agency. It is the duty of an officer or employee of an
15 agency having such records under the officer's or employee's
16 control to permit access to and examination of the records on
17 the request of the committee or state comptroller. Any person
18 who willfully fails or refuses to furnish or produce any book,
19 record, paper, document, data or sufficient information
20 necessary to a proper audit that the committee or the state
21 comptroller is authorized to perform shall be subject to
22 removal from office and is guilty of a petty misdemeanor and
23 shall be sentenced in accordance with the provisions of Section
24 31-19-1 NMSA 1978.

25 D. For the purposes of conducting performance

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1 audits, the committee or the state comptroller may attend
2 executive sessions of the governing body of an agency and the
3 facilities of any agency shall be available for use by the
4 committee or the state comptroller in carrying out its
5 functions.

6 E. At a minimum, a performance audit shall
7 specifically determine the following:

8 (1) the identifiable cost of the program;
9 (2) the specific purpose of the program,
10 including the specific outputs and outcomes derived therefrom;

11 (3) progress toward achieving the performance
12 standards associated with the program;

13 (4) an explanation of circumstances
14 contributing to the agency's ability to achieve, not achieve or
15 exceed the performance standards associated with the program;

16 (5) alternative courses of action that would
17 result in administration of the same program in a more
18 efficient or effective manner. The courses of action to be
19 considered shall include:

20 (a) whether the program could be
21 organized in a more efficient and effective manner;

22 (b) whether the program's mission, goals
23 or objectives should be redefined;

24 (c) when the agency cannot demonstrate
25 that its efforts have had a positive effect, whether the

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1 program should be reduced in size or eliminated;

2 (d) whether the program could be
3 administered more efficiently or effectively to avoid
4 duplication of activities and ensure that activities are
5 adequately coordinated;

6 (e) whether the program could be
7 performed more efficiently or more effectively by another unit
8 of government or a private entity or whether a program
9 performed by a private entity could be performed more
10 efficiently and effectively by an agency;

11 (f) when compared to costs, whether
12 effectiveness warrants elimination of the program or, if the
13 program serves a limited interest, whether it should be
14 redesigned to require users to finance program costs;

15 (g) whether the cost to administer the
16 program exceeds license and other fee revenues paid by those
17 being regulated; and

18 (h) whether other changes could improve
19 the efficiency and effectiveness of the program;

20 (6) the consequences of discontinuing the
21 program. If discontinuation is recommended, the recommendation
22 shall be accompanied by a description of alternatives to
23 implement the recommendation, including an implementation
24 schedule for discontinuation and recommended procedures for
25 assisting agency employees affected by the discontinuation;

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1 (7) whether agency management has established
2 control systems sufficient to ensure that performance measures
3 are maintained and supported by agency records and accurately
4 presented in agency performance reports; and

5 (8) if the performance audit report contains
6 recommendations or alternative courses of action, the estimated
7 financial consequences, including any potential savings, that
8 could be realized if the recommendations or alternative courses
9 of action were implemented.

10 F. Working papers and other audit files maintained
11 by the committee or the state comptroller in conducting a
12 performance audit are confidential and are not public records.

13 G. Final performance audit reports shall be
14 transmitted to the governor and the committee. Copies of the
15 reports shall be made available to the members of the senate
16 finance committee, the house appropriations and finance
17 committee, any other interested legislator, users of the
18 program audited and any interested member of the public. The
19 reports shall be considered by the director of the division
20 when a budget is prepared pursuant to Section 6-3-15 NMSA 1978,
21 by the governor when he prepares budgets pursuant to Section
22 6-3-21 NMSA 1978 and by the committee when it develops budget
23 recommendations pursuant to Section 2-5-4 NMSA 1978.

24 H. As used in this section, "performance audit"
25 means an examination of a program activity or function of an

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1 agency, conducted in accordance with applicable government
2 auditing standards or auditing and evaluation standards of
3 other appropriate authoritative bodies. The term includes an
4 examination of issues related to:

5 (1) economy, efficiency or effectiveness of
6 the program;

7 (2) structure or design of the program to
8 accomplish its goals and objectives;

9 (3) adequacy of the program to meet the needs
10 identified by the legislature or governing body;

11 (4) alternative methods of providing program
12 services or products;

13 (5) goals, objectives and performance
14 measures used by the agency to monitor and report program
15 accomplishments;

16 (6) the accuracy or adequacy of public
17 documents, reports or requests prepared under the program by
18 agencies; and

19 (7) compliance of the program with
20 appropriate policies, rules or laws. "

21 Section 8. APPROPRIATION. -- Seven hundred fifty thousand
22 dollars (\$750,000) is appropriated from the general fund to the
23 state comptroller for expenditure in fiscal year 2004 to carry
24 out the provisions of this act. Any unexpended or unencumbered
25 balance remaining at the end of fiscal year 2004 shall revert

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